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DEC 16 2002

OFFICE OF PETITIONS

In re Application of
Shotaro Yamaguchi
Application No. 09/727,769
Filed: December 4, 2000
Attorney Docket No. Q62106

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: DECISION ON PETITION
: UNDER 37 CFR 1.78(a)(3)
:

This is a decision on the renewed petition under 37 CFR 1.78(a)(3), filed by facsimile transmission on December 12, 2002, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to prior-filed nonprovisional Application No. 09/324,910, filed June 3, 1999. An substitute amendment was filed concurrently with the instant renewed petition.

The petition is GRANTED.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

- (1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application(s), unless previously submitted;¹
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was

¹ Any nonprovisional application or international application designating the United States of America claiming the benefit of one or more prior-filed copending applications or international applications designating the United States of America must contain or be amended to contain a reference (amendment to the first line of the specification following the title or in an application data sheet (ADS) to each such prior-filed application, identifying it by application number (consisting of the series code and serial number) or international application number and international filing date and indicating the relationship of the applications. Cross references to other related applications may be made when appropriate (see § 1.14).

filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant pending application was filed on December 4, 2000, and was pending at the time of filing of the instant petition. Further, copendency exists between the instant application and prior-filed nonprovisional Application No. 09/324,910, for which a claim for benefit of priority is now being sought. A reference to the prior-filed nonprovisional application has been included in an amendment to the first sentence of the specification following the title, as required by 37 CFR 1.78(a)(2)(i).

The instant nonprovisional application was filed after November 29, 2000, and the claim herein for the benefit of priority to the prior-filed nonprovisional application is submitted after expiration of the period specified in 37 CFR 1.78(a)(2)(ii). Also, the reference to the prior-filed nonprovisional application was submitted during the pendency of the instant nonprovisional application. See 35 U.S.C. § 120. Accordingly, having found that the instant petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. § 120 to prior-filed nonprovisional Application No. 09/324,910 satisfies the conditions of 37 CFR 1.78(a)(3), the petition is granted as of the date of filing the petition.

A corrected Filing Receipt, which includes the priority claim to prior-filed nonprovisional Application No. 09/324,910, accompanies this decision on petition.

Any inquiries concerning this decision may be directed to the undersigned at (703) 305-8680.

This application is being forwarded to Technology Center Art Unit 1652 to await a reply to the nonfinal Office action or August 13, 2002 or, if filed, for association of the reply with the application. Additionally, the Examiner will undertake appropriate processing and consideration of the claim under 35 U.S.C. § 120 for the benefit of priority to prior-filed nonprovisional Application No. 09/324,910, filed June 3, 1999.



Frances Hicks

Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

ATTACHMENT: Corrected Filing Receipt